



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 21, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0194

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy, and Department Policy	Sustained
# 2	5.001 – Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained - Inconclusive

Proposed Discipline

5 to 7 Day Suspension Without Pay

Imposed Discipline

6 Day Suspension Without Pay

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

ADMINISTRATIVE NOTE ON PROPOSED FINDINGS:

When the OPA Director recommends a sustained finding for one or more allegations, a discipline committee, including the named employee's chain of command and the department's human resources representative, convenes and may propose a range of disciplinary to the Chief of Police. While OPA is part of the discipline committee, the Chief of Police decides the imposed discipline, if any. See OPA Internal Operations and Training Manual section 7.3 – Sustained Findings.

EXECUTIVE SUMMARY:

It was alleged that Named Employee #1 (NE#1) violated state law when he drove under the influence and struck a Washington State Patrol (WSP) vehicle. It was further alleged that NE#1 was untruthful when he notified his chain of command about the collision and denied he was impaired or under arrest.

ADMINISTRATIVE NOTE:

The Seattle Office of Inspector General (OIG) reviewed this case and certified the investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

OPA reviewed the OPA complaint, WSP incident reports, WSP in-car videos, photographs, a toxicology test report, court records, and OPA interviews.



A. OPA Complaint

On April 21, 2021, Witness Supervisor #1 (WS#1)—a captain—sent an OPA complaint via Blue Team. WS#1 wrote that NE#1 reported he was involved in a traffic collision on Interstate-5, where he struck a WSP vehicle. NE#1 claimed he was not impaired or under arrest but declined to perform field sobriety tests (FSTs) when asked by a WSP trooper. WSP confirmed NE#1 was arrested for driving under the influence (DUI).

B. Washington State Patrol Incident Reports

Several WSP troopers responded to the incident and wrote incident reports. OPA reviewed all incident reports and found them to be consistent. The following represents a synthesized account of their reports:

On April 19, 2021, around 12:11 PM, Trooper #1 was in the emergency lane left of the HOV lane on northbound Interstate-5 near Michigan Street. Trooper #1 was responding to a collision involving Community Member #1 (CM#1) and others. A vehicle struck the back right side of Trooper #1's patrol car, causing it to accelerate forward and crash into CM#1. That vehicle continued north and stopped after about a quarter mile. The car stopped on the HOV lane and the left emergency lane. Troopers identified NE#1 as the driver by his driver's license. Troopers also observed that NE#1's front left wheel axle was broken, and the side airbags were deployed.

Trooper #2 approached NE#1. NE#1 said he was an off-duty Seattle Police Department officer coming from the airport. NE#1 exited his vehicle. Trooper #2 asked NE#1 what happened. NE#1 said multiple cars stopped ahead of him, so he merged into the HOV lane. NE#1 said a car blocked the HOV lane, so he swerved to avoid it but could not.

Trooper #2 and other troopers noticed that NE#1's movements were slow, lethargic, labored, and imbalanced. Troopers also noted NE#1 struggled to form sentences, trailed off in his speech, and slurred words. Trooper #2 asked whether NE#1 was medicated. NE#1 said he took medication for an injury he sustained on duty. Trooper #2 asked NE#1 several times whether NE#1 would perform FSTs. NE#1 refused, saying, "I don't do fields," and that he does not have to do them because he is a drug recognition expert. NE#1 asked to make a phone call, which Trooper #2 allowed. After NE#1's phone call, Trooper #2 asked NE#1 several times why NE#1 traveled a quarter mile north after striking Trooper #1's patrol car. NE#1 initially said he could not get his door open. NE#1 then said he stopped at the safest place. NE#1 also said his vehicle's gas and brake did not work, so it eventually stopped where it was at.

NE#1 said he would fill out a witness statement. Upon NE#1's completion of the witness statement, Trooper #2 arrested him for DUI. While handcuffed, NE#1 asked Trooper #3 to contact NE#1's lieutenant. Trooper #3 spoke with NE#1's lieutenant. Trooper #2 got a blood draw search warrant, and NE#1's blood was drawn.

C. Washington State Patrol In-Car Videos

WSP provided multiple ICVs to OPA. OPA reviewed all ICVs and found them consistent with the incident reports. In addition to the information supplied in the incident reports, OPA observed that when NE#1 asked Trooper #2 if NE#1 could make a call, NE#1 asked if he could call his lieutenant "just to let them know." NE#1 was captured leaning against a concrete barrier on the left of the emergency lane while talking on a phone, presumably to his lieutenant.



D. Washington State Patrol Toxicology Test Report

OPA reviewed the WSP Toxicology Test Report for NE#1, which detected 0.066 +/- 0.005 g/100 mL of ethanol. Diazepam, fluoxetine, gabapentin, nordiazepam, norfluoxetine, oxazepam, temazepam, and tramadol were also detected.

E. Court Records

OPA reviewed the Statement of Defendant on Plea of Guilty, signed by NE#1 on February 8, 2023, and filed that same day in King County District Court, South Division, at the Maleng Regional Justice Center. In it, NE#1 stated he was charged with DUI under RCW 46.61.502 and pled guilty to the crime of "DUI (no test)." NE#1 also said: "On 4/19/21 in King County, WA, I operated a motor vehicle while under the influence of and affected by intoxicants."

F. Interview

OPA interviewed NE#1. NE#1 admitted to operating his vehicle under the influence of intoxicants. He said, "At the time, I perhaps didn't realize the extent of my impairment." He also acknowledged he should not have been driving. NE#1 also admitted to ingesting the compounds detected in his blood. He said they were prescribed medications that should not have been mixed with alcohol.

OPA asked NE#1 when he called his lieutenant to report the collision. Specifically, NE#1 was asked about him telling his lieutenant he was not impaired or under arrest. NE#1 responded, "I honestly don't remember that phone call." NE#1 also stated impairment is a "subjective feeling" because he did not feel impaired then. When NE#1 was asked if he intentionally made untruthful statements, NE#1 responded, "I did not intentionally mislead or lie during this. I was not in my right mind. I was impaired." NE#1 said his recollection of that day was "fragmented at best." At the end of the interview, NE#1 took responsibility for his conduct and discussed what he had done to move forward.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy, and Department Policy

It was alleged that NE#1 violated the law by operating his motor vehicle while intoxicated.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy.

NE#1 violated the law by driving while under the influence of intoxicants in violation of RCW 46.61.502. Beyond the overwhelming evidence documented by WSP troopers, NE#1 pled guilty to DUI (RCW 46.61.502). The factual predicate NE#1 admitted to was that he "operated a motor vehicle while under the influence of and affected by intoxicants." King County District Court accepted NE#1's guilty plea. There is no dispute that NE#1 violated the law.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #1 - Allegation #2

5.001 - Standards and Duties 11. Employees Will Be Truthful and Complete in All Communication

It was alleged that NE#1 was untruthful when he called his lieutenant and informed her that, after the collision, he was not impaired or under arrest.

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

Here, NE#1 made two claims: (1) he was not impaired, and (2) he was not under arrest. When NE#1 made those statements, NE#1 was not under arrest as he was permitted to call his lieutenant while WSP troopers investigated a possible DUI. ICV showed NE#1 speaking to someone on the phone—presumably his lieutenant—while leaning against the concrete barrier. NE#1 was not in handcuffs at this time. The statement that NE#1 was not under arrest—at the time he made that statement—was truthful.

The second claim—that NE#1 was not impaired—is problematic. Here, NE#1 was impaired, as evidenced by the WSP toxicology test report showing he had alcohol and other compounds in his blood. Further damaging, NE#1 struck a WSP trooper's patrol car safely parked in the emergency lane, injured CM#1, and nearly left the scene by driving a quarter mile north. NE#1 was observed to have unsteady bodily movements and incoherent speech. Despite these indicators, NE#1 claimed, in a phone call to his lieutenant, that he was not impaired.

NE#1 did not remember that phone call. NE#1 also stated he did not feel impaired at the time of the incident, which was a "subjective feeling." While NE#1's conduct was inconsistent with his claim that he was not impaired, OPA recognizes that NE#1's judgment may have been impaired to such a degree that he could have been incapable of intentionally being untruthful. After all, toxicology test results revealed the presence of alcohol and eight other compounds in NE#1's blood. NE#1, however, was impaired. Although OPA agrees with NE#1 that he was not in his right mind at the time of the incident, OPA cannot conclude that his statement amounted to dishonesty. There is insufficient evidence to determine whether NE#1 intentionally misled his lieutenant by claiming he was not impaired.

Accordingly, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**